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Update on the Status of the ACA

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With the impending inauguration, recent actions by the Senate and some confusing media reports, we wanted to provide a short Q&A to help you understand current events and what to expect as we head down the health care reform road in 2017.

What's the latest news?

The Senate took action to begin the budget reconciliation process and recent comments from Republican Party leaders appear to favor a "Repeal and Replace" strategy.

Budget Resolution

The Senate (51-48) and House (227-198) both approved a concurrent resolution that directs House and Senate committees to begin working on legislation that will, among other things, repeal pieces of the ACA. This action effectively "kicks off" the budget reconciliation process which allows for the repeal of budget related portions of the ACA with a simple majority (51 votes) in the Senate. Democrats were unsuccessful in trying to amend the resolution protecting certain features of the ACA from repeal or change.

Repeal and Replace

Comments from President-elect Trump and Congressional leaders appear to favor a concurrent "Repeal and Replace" strategy, versus "Repeal and Delay." Recently House Speaker Ryan remarked that Congressional Republicans and the incoming Trump administration are "in complete sync" and that moving forward with health care reform will be done "concurrently, at the same time repeal and replace." It is widely expected that Congressional Democrats will not cooperate with or agree to repeal of the ACA without at least a replacement for the ACA.

Will there be full repeal on day one?

Unlikely. Congress is expected to make changes to the ACA through reconciliation. Reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation. Such action may affect provisions in the ACA related to the tax code, such as the taxes, subsidies, and individual and employer mandates penalties. It does not allow a complete repeal of the entire ACA.

Repeal of provisions such as mandated benefits (e.g., prohibitions against preexisting condition exclusions) would require 60 votes in the Senate and there are 52 Republicans in the Senate. The Exchanges couldn't be dismantled immediately from a practical perspective.

Remember that non-ACA related laws such as HIPAA, ERISA, and the new wellness rules would all still stand

What's the process and how long will it take?

The appropriate committees will begin drafting legislation, like any other bill in Congress. Once approved by committees, the bill must be passed by the House.

Once through the House, the bill will then be sent to the Senate where it could be amended. If the bill is amended, then it goes through a conference committee to resolve differences between the House and Senate versions.

Another round of votes will be needed in both chambers to approve of any amended legislation before it can be sent to the President for his signature.

The bottom line, there is no set timeline and historically this is not a "quick" process.

What will likely happen?

Something major. Many provisions of the ACA are expected to be repealed. There could be nonenforcement of others. While a replacement is anticipated, Congress and the Trump administration have not yet articulated a clear plan. Proposals include limitation of employer tax deductions and employee tax exclusions on health coverage, tax credits for purchasing coverage, and expansion of HSAs/HDHPs. It is expected that Congressional Republicans will be meeting shortly after the inauguration with the new administration to hash out the strategy. Hopefully, some details will be provided following that meeting.

Will it be easy to understand/implement?

Doubtful. Dismantling the ACA and implementing a new reform package will likely be even more challenging than the original ACA implementation. Deciphering what stays, what goes, the timing of the changes, along with any new requirements will be difficult for all stakeholders in the health care system. We will keep you posted as we go through this process.